

MCI Telecommunications
Corporation

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Washington, DC 20006

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 2, 1999

ORIGINAL

Ms. Magalie Roman Salas
Secretary Federal Communication Commission
1919 M Street, N.W.
Washington, DC 20554

EX PARTE PRESENTATION

Re: *In the Matter of Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity, or in the Alternative, Various Other Relief, NSD File L-98-121; CC Docket No. 96-98* ✓

Dear Ms. Salas:

On February 1, 1999 Mary Brown, Andrew Graves and Mary De Luca representing MCI Worldcom, Inc. met with Kurt Schroeder, Gregory Cook and Robin Smullen of the Network Services Division (NSD) of the Common Carrier Bureau to discuss issues associated with this proceeding in light of the January 25, 1999 Supreme Court decision.

During discussions the NSD staff asked MCI Worldcom to collect public information on the status of Regional Bell Operating Companies' (BOCs') implementation plans in certain states. The requested information is attached.

In addition, I have attached recent action taken by Ameritech in Michigan. Ameritech seeks yet another stay of a PUC Order requiring immediate implementation of intraLATA dialing parity. Similarly, Bell Atlantic in Maryland asserted that they are not required to follow any state order for implementing intraLATA dialing parity and the Commission's own rules are not in effect until the rules are officially re-instated by the Eighth Circuit and the FCC sets a new implementation date.

On a positive note, today the Alabama Commission accepted BellSouth settlement agreement with both AT&T and MCI Worldcom requiring implementation of intraLATA dialing parity on February 8, 1999. As part of the agreement this plan will extend to Mississippi, Tennessee and South Carolina also by February 8, 1999.

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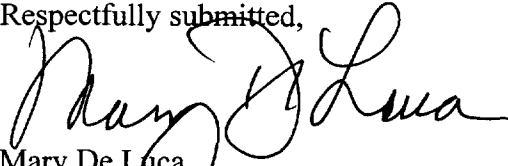
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Ms. Magalie Roman Salas

Please include this letter in the record of these proceedings in accordance with Section 1.1206 (a)(2) of the Commission Rules. Please contact me with any questions you may have .

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mary De Luca", written over the typed name.

Mary De Luca
Senior Policy Advisor,
Federal Regulatory, MCI Worldcom, Inc.

CC: Larry Strickling, Chief, Common Carrier Bureau
Yog Varma, Deputy Chief, Common Carrier Bureau
Anna M. Gomez, Chief, Network Services Division
Kurt Schroeder, Deputy Chief, Network Services Division
Gregory Cook, Network Services Division
Robin Smullen, Network Services Division

Attachments

Status of BOC IntraLATA Implementation Plans in States w/o Defined Implementation Deadlines

* AL, SC and TN subject to recent BellSouth negotiations

STATE	BOC	BOC PLAN FILED	BOC PLAN APPROVED	TECHNICALLY & OPERATIONALLY READY	ILEC PLANS IMPLEMENTED
*AL	BellSouth	Yes, Via SGAT tariff	SGAT tariff not approved; BS asserted that effective date of tariff is coincident with interLATA authority; hearing set for 2/2/99	BS agreed to open network by 2/8/99	GTE
AR	SBC	No	NA	Nothing on record.	GTE
CA	SBC	Yes	Yes	Yes. I.87-11-033 et al. ALJ Draft decisions at 7 (citing pre-hearing transcript at 921-922. 1/7/99	GTE
ID	USWest	6/1/99	NA; State Legislation expires 7/1.	Nothing on record. USW implemented in 11 states.	GTE
KS	SBC	Yes	No	State Legislation	SPRINT; GTE
MI	Ameritech	Yes (1995)	Yes, as part of 271 application.	DP already implemented for 70% of AMT MI territory. AMT seeks stay of PUC ruling.	GTE; AMERITECH
MD	Bell Atlantic	Yes	Yes	Yes; in Global Settlement Negotiations.	NA
MO	SBC	Yes	No	Nothing on record.	GTE
ND	USWest	No	State Legislation expires 7/31	Nothing on record; USW attempt to extend legislation to 8/20001	SMALLER LECs
NV	SBC	Yes	Yes	Yes	SPRINT
OK	SBC	Yes	No	Within 48 hours (as stated in evidentiary hearing)	GTE
*SC	BellSouth	Yes, Via SGAT tariff	SGAT tariff approved. (See AL.)	BS agreed to open network 2/8/99	GTE
SD	USWest	No	State Legislation	Nothing on record; PUC attempting to overturn based on SCt. Decision.	SMALLER LECs
*TN	BellSouth	Yes, via SGAT tariff	SGAT tariff not approved. (See AL)	BS agreed to open network 2/8/99	SPRINT; GTE
TX	SBC	Yes	Yes	Yes	SPRINT; GTE
VA	Bell Atlantic	Yes	Yes	Nothing on record.	SPRINT; GTE

STATE OF MICHIGAN
IN THE COURT OF APPEALS

In the matter of the application and complaint of MCI)
TELECOMMUNICATIONS CORPORATION against)
MICHIGAN BELL TELEPHONE COMPANY d/b/a)
AMERITECH MICHIGAN seeking (i) a 55% discount)
on intrastate switched access service where intraLATA)
dialing parity is not provided and (ii) an order requiring)
implementation of intraLATA dialing parity on an)
expedited basis now that July 1, 1997 has passed.)
_____)

Court of Appeals

Case No. 217037

MPSC Case No. U-11743

MCI TELECOMMUNICATIONS CORPORATION,

Complainant-Appellee,

and

AT&T COMMUNICATIONS OF MICHIGAN,
SPRINT COMMUNICATIONS COMPANY, LP,
LCI INTERNATIONAL, and ATTORNEY GENERAL,

Intervenors-Appellees,

and

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

v

AMERITECH MICHIGAN,

Respondent-Appellant.

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Peter H. Ellsworth (P23657)
John M. Dempsey (P30987)
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AMERITECH MICHIGAN'S REPLY AND SUPPLEMENTAL AUTHORITY

Last Monday, the United States Supreme Court issued its decision in AT&T Corp v Iowa Utilities Board, 1999 WL 24568; 1999 LEXIS 903 (January 25, 1999) (attached as Exhibit 1), decreeing that intraLATA toll dialing parity regulations issued by the Federal Communications Commission ("FCC")¹ are valid and are the supreme law of the land.² Accordingly, the Opinion and Order issued on January 19, 1999 by the Michigan Public Service Commission ("MPSC") in this case must be stayed for this additional reason.

In Iowa Utilities Board, the U. S. Supreme Court reversed the decision of the United States Court of Appeals for the Eighth Circuit in People of California v FCC, 124 F3d 934 (CA 8, 1997), which had held that the FCC lacked jurisdiction to issue regulations as to intrastate dialing parity. As MCI and AT&T correctly state on page 20 of their Brief and Answer In Opposition to Ameritech Michigan Motion for Immediate Stay Pending Appeal: "The Supreme Court's opinion reinstates the regulations of the Federal Communications Commission (FCC) regarding implementation of dialing parity in accordance with the requirements of the Telecommunications Act of 1996 ('FTA')." Ameritech Michigan further agrees with MCI and AT&T that: "In the wake of the Supreme Court's decision, the FCC's regulations now govern again . . ." (Id., p 21)).

¹ The FCC toll dialing parity regulations appear at 47 CFR § 51.209 et seq. They are attached here as Exhibit 2.

² As the Court stated, the federal government "has taken . . . away" from the states regulation of matters addressed by federal law. Id. n 6.

MCI and AT&T incorrectly assert, however, that the federal regulations require Ameritech to institute dialing parity in the remainder of its exchanges by February 8, 1999. MCI and AT&T fail to advise this Court that the FCC regulations provide: (1) that local exchange companies ("LECs") such as Ameritech Michigan must file an implementation plan; and (2) that such LECs "cannot offer intraLATA toll dialing parity within a state until the implementation plan has been approved by the appropriate state commission or the [Federal Communications] Commission." 47 CFR § 51.213(a). To date, neither the MPSC nor the FCC has approved an Ameritech Michigan implementation plan.³ Although the MPSC previously issued orders on matters that must be addressed under the FCC's toll dialing parity regulations, there has been no determination by either the MPSC or the FCC that those orders are, in fact, consistent with federal requirements. The State of Michigan's authority regarding dialing parity is limited to that set forth in the FCC's regulations, and the MPSC Order is inconsistent with and preempted by the FCC regulations.⁴ Ameritech Michigan's obligation now is to obey federal regulations.⁵ That, it will promptly do.

³ Ameritech Michigan filed a dialing parity implementation plan with the MPSC on November 27, 1996 in Docket No. U-11104. The MPSC never acted on or approved that plan.

⁴ In their "Statement of Bases of Jurisdiction," MCI and AT&T assert that Ameritech Michigan erroneously relies solely on MCR 7.209 (regarding stays of judgment and orders). They insist that the only proper jurisdictional basis is the injunction provision set forth in MCL § 426.26(1); MSA § 22.45(1). Contrary to MCI and AT&T's assertion, Ameritech Michigan discusses and relies upon both the court rule and the statute. See, Ameritech Michigan's Brief in Support of Motion for Immediate Stay Pending Appeal, pp 13-14. Moreover, the distinction between the two is meaningless because, as established by the cases cited by Ameritech Michigan, the same four-factor test is applicable in both contexts. This Court entered a stay in the prior dialing parity litigation (see, Ameritech Michigan v Public Service Commission, 229 Mich App 664, 703; 583 NW2d 458, lv granted, 459 Mich 878 (1998)), under the same authority cited by Ameritech Michigan in this matter.

The reinstatement of the FCC regulations at this juncture renders implementation of toll dialing parity in compliance therewith an impossibility. The FCC regulations had established a deadline of February 8, 1999 for implementation of dialing parity in all exchanges. That deadline — only one week from now — will be impossible for certain LECs, including Ameritech Michigan, to achieve. See Affidavit of John Mazor, attached as Exhibit 4 to Ameritech Michigan's Brief in Support of Motion for Immediate Stay Pending Appeal. Ameritech Michigan stands ready to implement intraLATA toll dialing parity in the remainder of its exchanges as soon as feasibly consistent with the FCC's determinations.

What is critical for disposition of Ameritech Michigan's pending motion is that the Supreme Court's interpretation of federal law and reversal of the Eighth Circuit's vacating of FCC toll dialing parity regulations preempts the MPSC's authority. AT&T and MCI admit, as they must, that "... the FCC's regulations now govern" See Brief, p. 21. Their further argument, however — that this Court should refuse to issue a stay and force Ameritech Michigan to obey the MPSC's January 19th order — is nonsensical. On the one hand, MCI and AT&T acknowledge that toll dialing parity is now governed by the federal regulations. On the other, they insist that Ameritech Michigan should be required to follow an inconsistent MPSC order

Footnote continued from previous page...

⁵ State laws or actions that conflict with federal law are preempted, and thus invalid under the Supremacy Clause of the U.S. Constitution, when Congress has "occupied the field" with respect to a particular matter. Rice v Santa Fe Elevator Corp. 331 US 218, 230 (1947). The intent to supersede state law altogether on a particular matter may be found from a "scheme of federal regulation . . . so pervasive as to make no room for the States to supplement it." Fidelity Federal Savings & Loan Ass'n v de la Cuesta, 458 US 141, 153 (1982) (internal quotation marks omitted). Here, it is evident from even a cursory review of the federal regulations that the FCC intended to occupy the field. In fact, the only exception to the assertion of federal jurisdiction as to Bell Operating Companies such as Ameritech Michigan is an exception for the implementation of state dialing parity orders issued by December 19, 1995. See, 47 CFR § 51.211(e)(1).

issued under state law. Contrary to this illogical position, if the federal regulations control, as they do, this Court has no choice but to issue a stay of the MPSC's order.

The order at issue in this case — an order issued under state law — cannot be enforced no matter what its intended effect. Ameritech Michigan's duty is to comply with FCC directives. That, it will do. Ameritech Michigan fully intends to implement intrastate intraLATA toll dialing parity in accordance with the governing federal scheme. An inconsistent state law scheme is thus displaced and should not interfere with that implementation. Accordingly, the MPSC order at issue in this case should be stayed.

Respectfully submitted,

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Dated: February 1, 1999

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